

DEPARTMENT OF STATE REVENUE**SUPPLEMENTAL LETTER OF FINDINGS NUMBER: 97-0028 SLF
STATE GROSS RETAIL TAX
For Years 1992, 1993, 1994, AND 1995**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES**I. State Gross Retail Tax – Prescription safety glasses.**

Authority: 45 IAC 2.2-5-28; IC § 6-2.5-5-18

Taxpayer protests the assessment of tax on prescription safety glasses purchased for employees.

II. State Gross Retail Tax – Statute of limitations.

Authority: IC § 6-2.5-3-2; IC § 6-2.5-4-1

Taxpayer protests the assessment of tax on transaction alleged to be outside statute of limitations.

STATEMENT OF FACTS

Taxpayer is a specialty chemical manufacturer. Taxpayer's large-scale production facilities are located outside of Indiana. Products that are manufactured which do not require a full plant quantity production run are produced at Taxpayer's Indiana pilot plant. These small production runs are for marketed products and research and product development projects. After an initial hearing, Letter of Finding 04970028.LOF was issued, Rehearing was granted on two issues. The following discussion supplements the First Letter of Findings.

I. State Gross Retail Tax – Prescription safety glasses.

DISCUSSION

Taxpayer protests assessment of tax based on its purchase of prescription safety glasses for employees. Taxpayer cites IC § 6-2.5-5-18, which states in relevant part:

- (a) Sales of artificial limbs, orthopedic devices, dental prosthetic devices, eyeglasses, contact lenses, and other medical equipment, supplies, and devices are exempt from the state gross retail tax, if the sales are prescribed by a person licensed to issue the prescription.

Taxpayer provides additional documentation, and has demonstrated that the eyeglasses are exempt under this statute by demonstrating proof that these sales were the result of a prescription by a person licensed to issue a prescription.

FINDINGS

Taxpayer's protest is sustained.

II. State Gross Retail Tax – Statute of limitations

DISCUSSION

Taxpayer is protesting the assessment on purchases made by its sister corporation and then transferred to Taxpayer. The purchases of non-exempt specialty equipment made by the sister corporation were during the calendar year of 1991, the transfer to Taxpayer's corporation did not occur until April of 1992. Taxpayer argues that the transfer between the two corporations was not a retail transfer, but a casual sale exempted from tax.

The transfer between the corporations can constitute a taxable event for Taxpayer; the tax is imposed under IC § 6-2.5-3-2, which requires:

- (a) An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana, if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.

Indiana Code § 6-2.5-4-1, defines selling at retail as:

- (b) A person is engaged in selling at retail when, in the ordinary course of his regularly conducted trade or business, he:
 - (1) Acquires tangible personal property for the purpose of resale; and
 - (2) Transfers that property to another person for consideration.

The April 1992 purchase was a sale of tangible personal property, but was not part of the regularly conducted trade or business of the corporation selling the property and was thus a casual sale exempted from tax by Taxpayer. Consequently the tax does not apply.

FINDINGS

Taxpayer's protest is sustained.

JM/PE/MR 010308